

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC ROBERTSON,

Defendant.

2:04-cr-223

2:14-cv-778

MEMORANDUM ORDER

Now pending before the Court is Defendant Eric Robertson's MOTION TO CORRECT SENTENCE UNDER 28 U.S.C. § 2255 (ECF No. 56), filed on his behalf by the Federal Public Defender. No response is necessary.

Robertson argues that he should be re-sentenced because he no longer qualifies as a career offender. Specifically, he argues that his prior conviction for simple assault under Pennsylvania law, 18 Pa.C.S.A. § 2701(a)(1), is not a "crime of violence" under the elements-driven categorical approach used in the recent Supreme Court decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013).

Unfortunately for Robertson, this precise argument was rejected by the United States Court of Appeals for the Third Circuit in *United States v. Marrero*, 743 F.3d 389 (3d Cir. 2014), which held that simple assault remains a crime of violence. As the Federal Public Defender recognizes, this Court is required to follow the holding in *Marrero*.

Accordingly, the MOTION TO CORRECT SENTENCE UNDER 28 U.S.C. § 2255 (ECF No. 56) is **DENIED**. Civil Action No. 14-778 shall be marked closed. Defendant shall have the right to appeal this ruling.

SO ORDERED this 24th day of June, 2014.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

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